

**2005 DRAFTING REQUEST**

**Bill**

Received: **09/21/2004**

Received By: **jkuesel**

Wanted: **As time permits**

Identical to LRB:

For: **Cathy Stepp (608) 266-1832**

By/Representing: **Jay Risch**

This file may be shown to any legislator: **NO**

Drafter: **jkuesel**

May Contact:

Addl. Drafters:

Subject: **State Finance - claims agnst st**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Stepp@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Village of Sturtevant claim

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**Instructions:**

\$158,800 plus interest per claim denied on 7/13/04.

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 10/28/2004	wjackson 11/01/2004					State
/1			rschluet 11/01/2004		lemery 11/01/2004	lemery 02/04/2005	

FE Sent For:

<END>

*Att Intro.*

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### Instructions:

\$158,800 plus interest per claim denied on 7/13/04.

5831, 7/13/04

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1/1	jkuesel 10/28	1/1 Wlj 10/30					
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FE Sent For:

<END>

pay - Sen Stepp

6-18-32

Claims for village of Sturtevant

for costs involving

sewer connection to Racine

Correctional Institution

\$ 158,800.00

SJ p. 831

private  
bills 775

Finally, the DATCP states that the decision to destroy the 40 rabbits was a business decision made by the claimant. The DATCP did not order the animals destroyed and should not be held responsible for any damages related to their destruction.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

**11. Tommy Gubbin** of Madison, Wisconsin claims \$1,000.00 for reimbursement of a vehicle insurance deductible. The claimant is employed as a Probation and Parole Agent with the Department of Corrections. The claimant works in an office where there is one state vehicle for four agents. The claimant states that on November 11, 2003, he was scheduled to conduct a home visit. The state vehicle assigned to the office was in use by another agent. The claimant states that other available state vehicles were located in the central office, 8 miles away. Because this was further away than the home the claimant was visiting, he used his personal vehicle to conduct the home visit. The claimant states that use of his personal vehicle is part of his job description and a regular part of his job. As the claimant was travelling northbound on Allied Drive a southbound vehicle made an abrupt left turn in front of him and the claimant was unable to stop. The other driver was cited for failure to yield and driving without a valid license. The van the other driver was operating belonged to another individual and was not insured. The claimant states that the accident occurred during the regular course of his duties and he requests reimbursement of his \$1,000 deductible.

The DOC does not object to payment of this claim. The DOC states that agents are permitted to use their personal vehicles for state business when a state vehicle is not available. They do not have to obtain a "nonavailability" slip unless the trip mileage is 50 miles or more. The department agrees that the accident occurred while the claimant was engaged in state business and appropriately using his personal vehicle and that the claimant was not at fault. Based on the circumstances, DOC agrees that it should be responsible for payment of the claimant's insurance deductible.

The Board concludes the claim should be paid in the amount of \$1,000.00 based on equitable principles. The Board further concludes, under authority of s. 16.007 (6m), Stats., payment should be made from the Department of Corrections appropriation s. 20.410 (1)(b), Stats.

**12. The Village of Sturtevant**, Wisconsin claims \$158,800.00 plus interest for payment of a sewer connection fee related to the construction of a Department of Corrections 300 bed Regional Probation and Parole Holding Facility in the Village of Sturtevant. The village alleges that, in accordance with Village Code section 13.17(2), the state is required to pay the village a sewer connection fee of \$400 per fixture, for a total fee of \$158,800. The state has refused to pay the charge, citing s. 13.48(13), Stats. The village disagrees and believes that the payment must be made pursuant to s. 66.0821(4), Stats. It is the village's position that the sewer connection charge is neither a permit fee nor a charge relating to construction of a building, but rather is a service charge authorized under s. 66.0821(4), Stats. The village states that under this section there is no exemption for state facilities relating to payment of sewer service charges. The village also points to a November 2, 2002, Legislative Council memo which cites s. 70.119(1), Stats. That section provides that the state "...shall make reasonable payments at established rates for water, sewer and electrical services and all other services directly provided by a municipality to state facilities..." The village believes that, based upon these two statutes, the state is required to pay the sewer connection charge.

The Department of Administration and Department of Corrections request denial of this claim. They maintain that the state is exempt from the sewer connection charges by virtue of s. 13.48(13)(a), Stats. The Department of Justice and Dane County Circuit Court both have found that this statute unambiguously exempts the state from local laws, permits and fees relating to construction. The village argues that the state must pay the connection charges under s. 66.0821(4), Stats. However, it is the state's position that, in order to be governed by local laws and ordinances, the state must clearly and unambiguously indicate that it consents to a waiver of sovereign immunity. The Attorney General has opined that "a statute of general application, no matter how inclusive its terms, will not be construed to apply to the government or its agencies if such construction would impair their rights or interests, unless the statute includes them expressly or by necessary implication." The state points out that the courts have consistently ruled in accord with this tenet. The state's position is that s. 66.0821(4) is of general applicability and lacks any express reference to the state or its agencies. The state points to s. 13.48(13), Stats., which specifically protects the state from local

construction laws. The village also relies on s. 70.119(1), Stats., and argues that the connection charge is not related to the construction of the facility, thus negating s. 13.48(13), Stats. The DOA and DOC agree that the state will make regular payments for municipal services after construction is completed, as is the usual case. Section 70.119(1), Stats., requires the state to make reasonable payments "at established rates" for various services provided by a municipality. The rate is to be based on usage but applicable to all users. The state argues that the connection charge is clearly not a "rate" but rather a one-time fee that is not required of all users, only new customers. Further more, the state points to the fact that the ordinance ties the issuance of a permit to allow connection with the payment of the fee. Without connection, construction of the building cannot be finished, so the charge is therefore obviously a one-time permit fee, imposed during construction, not a rate applicable to all users as required under s. 70.119(1), Stats. The state relies on the long-standing protection of sovereign immunity. Without this protection, hundreds of state building projects each year would be subject to every kind of permit fees municipalities could impose, which would drive up costs for state taxpayers. Finally, the DOA states that permit fees are never included in a building project's budget and state taxpayers would be harmed if the state was required to forfeit monies already allocated for construction costs to one-time, unplanned permit fees. For these reasons, the state requests denial of this claim.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles. *[Member Rothschild not participating.]*

**13. Teresa Oettinger** of Green Bay, Wisconsin claims \$1,025.00 for the cost of repairing siding allegedly damaged by a foster child in the care of the claimant's next door neighbor. The claimant states that on October 6, 2003, she observed the child throwing sticks and rocks at her neighbor's house, where he resides. The claimant states that she opened her window and yelled at the child to stop, at which time he threw several stones at her, which struck the side of her home and damaged the aluminum siding. The claimant states that, according to the police report, the child's foster mother was home at the time he was throwing the stones but was afraid to go outside to confront him. The claimant does not believe that the foster mother provided appropriate supervision of the child because she failed to even attempt intervention when the foster child was misbehaving. The claimant points to the fact that the foster mother does receive compensation for her role as foster parent and the claimant believes that along with that compensation comes some responsibility for the child's behavior. The claimant understands that laws are made to protect foster parents for the good of the community, however, she does not believe that those laws should absolve the foster parent of any and all responsibility for the child that has been entrusted to her care. The foster mother's homeowner's insurance would not cover the damage because it resulted from an intentional act. The claimant receives a "claim free" discount on her insurance premiums, which would increase if she filed a claim with her own homeowner's insurance. She also has a \$250 deductible. The claimant does believe it is fair for her to bear the burden of these costs because the foster mother sat in her home and did nothing but watch while the child in her care damaged the claimant's home.

The Department of Health and Family Services recommends denial of this claim. The DHFS states that the foster parent insurance program described in s. 48.627, Stats., only provides for payment of claims to the extent that the damages are not covered by any other insurance and for which the foster parent becomes legally liable. The claimant did not pursue any court action against the foster parent to determine whether or not she was legally liable and the claimant does have insurance to cover the damages. DHFS states that there does not appear to be any basis to assign liability to the foster parent or foster care agency. State and county agencies and foster parents provide care to foster children who may have serious behavioral problems. DHFS believes that it would be contrary to public policy to require foster parents and agencies to pay for the acts of troubled children unless there is a finding of legal liability on the part of the foster parent or agency. DHFS further believes that the government is not and should not be the ultimate payer for all crimes or wrongs and that property owners are responsible for maintaining insurance to protect themselves against these types of damages.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

## Kuesel, Jeffery

---

**From:** Risch, Jay  
**Sent:** Monday, September 20, 2004 4:00 PM  
**To:** Kuesel, Jeffery  
**Subject:** FW: Village of Sturtevant "private bill" request for assistance (File #731190.027)

**Importance:** High

-----Original Message-----

**From:** Erik Guenther [mailto:EGuenther@hnhb.com]  
**Sent:** Monday, September 20, 2004 10:48 AM  
**To:** Sen. Stepp  
**Cc:** David Wolfe; Risch, Jay; scompton@bizwi.rr.com; Lisa Pincikowski  
**Subject:** Village of Sturtevant "private bill" request for assistance (File #731190.027)  
**Importance:** High



LettertoDOAfromSe  
natorSteppeta...



258179.pdf



258180.pdf

Senator  
thy Stepp,  
Our firm is seeking your assistance in gathering information on the procedure and requirements for having a "private bill" (as described in Wisconsin Statutes 775.01) introduced to the Legislature. We represent the Village of Sturtevant and we are seeking compensation from the Department of Corrections and Department of Administration for a sewer connection charge that they are refusing to pay. You had previously requested payment from the Department of Administration on the Village's behalf. (See the attached letter to Secretary Mark Marotta, dated April 24, 2003, from you as well as Representative Ladwig and Representative Lehman.) Payment of this charge was discussed by the Wisconsin Legislative Council in a memo which was referenced in your letter. (See attached memo from Legislative Council Attorney Don Dyke, dated November 5, 2002.) We have filed a claim with the Claims Board (as described in Wisconsin Statutes 16.007) during September 2003 on the Village's behalf. (See attached.) This claim was denied by the Claims Board. At this point we will need to have a private bill introduced to the Legislature. We would like to discuss the requirements of such a bill with you and to also discuss the possibility of your introducing the bill on the Village's behalf. We ask that your office review the attached materials and that you or someone from your staff contact David Wolfe or me to discuss this issue. We can be reached at 262.632.7541. As an aside, I appreciate your note regarding the recent Young Professionals of Racine event at the Racine Zoo. I appreciate your attendance and support of the young professional community in southeastern Wisconsin. Thank you,  
Erik

Erik R. Guenther  
Hostak, Henzl & Bichler, S.C.  
840 Lake Ave.  
Racine WI 53403  
(262) 632-7541  
fax (262) 632-1256  
www.hnhb.com

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message in error, then delete the message. Thank you for your cooperation.





## WISCONSIN LEGISLATURE

P.O. BOX 8952 • MADISON, WI 53708

April 24, 2003

Secretary Mark Marotta  
Department of Administration  
101 East Wilson Street  
Madison, WI 53702

Dear Secretary Marotta *Mark*

We are writing regarding the imposition of a sewer connection charge by the Village of Sturtevant for sewer service to the state probation and parole holding facility at Racine Correctional Institute. It is our hope that you will be able to resolve the disagreement between the Village and your Department in a manner that will allow the timely opening of this important facility.

It is our understanding that the Department of Administration objects to the sewer connection charge on the grounds that state statutes do not require payment of these fees. We have read the enclosed memo written by Legislative Council Attorney Don Dyke, and it is our belief that the Village has a reasonable basis for assessing the sewer connection fee. As such, we are asking that your Department resolve payment of the fee with the Village of Sturtevant as soon as possible.

The State of Wisconsin has a history of paying this type of sewer connection fee to the Village of Sturtevant. In 1998, the Department of Corrections paid connection charges in the amount of \$22,400 to the Village, and there is no reason why that precedent should not be followed in this instance.

After reviewing all of the relevant information, we are convinced that the Department of Administration should reconsider its position, and we believe that the Village of Sturtevant and the State of Wisconsin must work together to resolve this issue as soon as possible.

Sincerely,

*Cathy Stepp*  
CATHY STEPP  
State Senator  
21<sup>st</sup> Senate District

*John Lehman*  
JOHN LEHMAN  
State Representative  
62<sup>nd</sup> Assembly District

*Bonnie Ladwig*  
BONNIE LADWIG  
State Representatives  
63<sup>rd</sup> Assembly District

cc: Steven Jansen, Village of Sturtevant President  
Timothy J. Pruitt, Village of Sturtevant Counsel  
John E. Rothschild, DOA Chief Counsel  
Alan Acker

**STATE OF WISCONSIN CLAIMS BOARD  
CLAIM FOR DAMAGES AGAINST THE STATE**

**• Offroad Use Only**

Claim No.

Submit one notarized copy of this form to the Claims Board, P.O. Box 7864, Madison, Wisconsin 53707-7864. Attach proof of loss; copies of all bills, receipts and insurance proceeds; and copies of medical and/or police reports, if applicable. If more space is needed attach additional pages and documentation, as needed. This information will be sent to the appropriate department or agency. *(Please be aware that claim files are considered public records. Information submitted may be open to inspection by the public under Wisconsin Public Records Law.)*

**Claimant's Name and Mailing Address**

Village of Sturtevant  
2801 Eighty-Ninth Street  
Sturtevant, WI 53177

Date(s) of Occurrence:

On or about July 14, 2003

### State Agency Claim is Against:

Department of Administration  
and Department of Corrections

Claimant's Phone Number: (262) 886-7200

Statement of Circumstances-Explain how claim arose. Give background information and details of claim. Attach additional pages and copies of supporting documentation, as needed.

See attached Statement of Circumstances.

COPY

Dollar Amount of Claim. Itemize all losses incurred. Attach copies of all bills and/or receipts to document amount claimed. (There are some statutory restrictions on the amount of Claims Board payments - see Claims Board pamphlet or section 16.007 of the Wisconsin Statutes for more information.)

\$158,800.00, plus interest.

Complete the insurance portion of this form, regardless of whether or not you have submitted a claim to your insurance company. Do not request reimbursement for damages paid for or covered by your insurance. Your insurance company must file a separate claim for reimbursement.

Insurance Coverage on above losses: \_\_\_\_\_ yes X no. If yes, state amount of coverage: \$\_\_\_\_\_ Amount of Deductible: \$\_\_\_\_\_  
Insurance Company: \_\_\_\_\_

I hereby certify that all statements contained herein and on any attachments hereto are true and that the losses claimed were actually incurred.

VILLAGE OF STURTEVANT

**Signature of Claimant**

W. Jansen, President

The above-named claimant personally came before me this day and is known to me to be the person who executed the foregoing instrument and acknowledged the same.

**Notary Public**

My commission is permanent.

**My Commission Expires:**

Racine

County, Wisconsin

### Statement of Circumstances

The Wisconsin Department of Administration ("DOA") constructed and the Department of Corrections ("DOC") is operating, a new 300 bed Regional Probation and Parole Holding Facility ("Facility") in the Village of Sturtevant ("Village"). In accordance with Village Code Section 13.17(2), a copy of which is attached as Exhibit A, the Facility is required to pay the Village a sewer connection charge of \$400.00 per fixture, for a total of \$158,800.00. More specifically, the following charges are due:

(1)	Holding Facility: 266 fixtures @ \$400.00/fixture =	\$106,400
(2)	Workhouse: 127 fixtures @ \$400.00/fixture =	50,800
(3)	Vehicle Storage Garage: 4 fixtures @ \$400.00/fixture =	<u>1,600</u>
	TOTAL	\$158,800

The DOA and DOC refused to pay this charge, claiming the state is exempt from such charges pursuant to §13.48(13), Stats. See May 22, 2002 DOA correspondence, attached hereto as Exhibit B. The Village disagrees and believes this connection charge must be paid by the DOA or DOC pursuant to §66.0821(4), Stats. See October 4, 2002 letter to Representative John Lehman, which is attached as Exhibit C. Additional support for the Village's position was supplied by the Wisconsin Legislative Council. See November 5, 2002 memorandum from Don Dyke, attached as Exhibit D. The Wisconsin Council believes, and the Village agrees, the charge is authorized by §70.119, Stats. The DOA disputes this argument as well. See March 24, 2003 letter from John Rothschild, attached as Exhibit E.

The Village agreed with the DOA to allow the sewer connection, but reserved its right to assert a claim for payment.

ORDINANCE NO. 2001- 40

**AN ORDINANCE TO AMEND SUBSECTION 13.17(2)  
OF THE CODE OF ORDINANCES  
FOR THE VILLAGE OF STURTEVANT,  
RACINE COUNTY, WISCONSIN,  
RELATING TO SEWER CONNECTION CHARGES**

The Village Board of the Village of Sturtevant, Racine County, Wisconsin, do ordain as follows:

1. That Section 13.17(2) of the Municipal Code of the Village of Sturtevant be, and hereby is, amended to read as follows:

"(a) Prior to the issuance of a permit allowing connection to the sanitary sewer system of the Village of Sturtevant, the Clerk/Treasurer shall collect the connection charge set forth below for each applicable lot, parcel of land or premises:

1. Single-Family Residential

<u>Year of Connection</u>	<u>Amount of Charge</u>
2002	\$3,200.00
2003	\$3,264.00
2004	\$3,329.28
2005	\$3,395.87
2006	\$3,463.78
2007	\$3,533.06
2008	\$3,603.72
2009	\$3,675.79
2010	\$3,749.31
2011	\$3,824.30

2. Multi-Unit Residential

<u>Year of Connection</u>	<u>Charge for 1<sup>st</sup> Unit</u>	<u>Charge for 2<sup>nd</sup> Unit</u>	<u>Charge for Each Additional Unit</u>
2002	\$3,200.00	\$2,000.00	\$1,500.00
2003	\$3,264.00	\$2,040.00	\$1,530.00
2004	\$3,329.28	\$2,080.80	\$1,560.60
2005	\$3,395.87	\$2,122.42	\$1,591.81
2006	\$3,463.78	\$2,164.86	\$1,623.65
2007	\$3,533.06	\$2,208.16	\$1,656.12

**EXHIBIT**

A

2008	\$3,603.72	\$2,252.32	\$1,689.24
2009	\$3,675.79	\$2,297.37	\$1,723.03
2010	\$3,749.31	\$2,343.32	\$1,757.49
2011	\$3,824.30	\$2,390.18	\$1,792.64

3. All Commercial, Industrial, Private and Public Institutions shall be charged on a reasonable basis as determined by the Village based on such factors as flow and nature of the sewer or waste, with a charge in an amount as set forth below or \$400.00 per fixture, whichever amount is greater:

AMOUNT OF CHARGE										
Meter Size										
Year of Connection	5/8"	3/4"	1"	1-1/2"	2"	3"	4"	6"	8"	
2002	\$3500.00	\$3600.00	\$3800.00	\$4300.00	\$5000.00	\$6300.00	\$8500.00	\$13500.00	\$15000.00	
2003	3570.00	3672.00	3876.00	4386.00	5100.00	6426.00	8670.00	13770.00	15300.00	
2004	3641.40	3745.44	3953.52	4473.72	5202.00	6554.52	8843.40	14045.40	15606.00	
2005	3714.23	3820.35	4032.59	4563.19	5306.04	6685.61	9020.27	14326.31	15918.12	
2006	3864.28	3896.76	4113.24	4654.45	5412.16	6819.32	9200.68	14612.84	16236.48	
2007	3964.28	3974.70	4195.50	4747.53	5520.40	6955.71	9384.69	14905.10	16561.21	
2008	3941.57	4054.19	4279.41	4842.48	5630.81	7094.82	9572.38	15203.20	16892.43	
2009	4020.40	4135.27	4365.00	4939.33	5743.43	7236.72	9763.83	15507.26	17230.28	
2010	4100.81	4217.98	4452.30	5038.12	5858.30	7381.45	9959.11	15817.41	17574.89	
2011	4182.83	4302.34	4541.35	5138.88	5975.47	7529.08	10158.29	16133.76	17926.39	

Charges for meter sizes in excess of 8" will be determined on a case-by-case basis by the sewer utility, after consultation with its engineer.

2. This ordinance shall take effect on January 1, 2002, after adoption and publication as provided by law.

Adopted by the Village Board of the Village of Sturtevant, Racine County, Wisconsin, this 20<sup>th</sup> day of November, 2001.

#### VILLAGE OF STURTEVANT

By: 

Allan Aeker, President Pro Temp

Attest: 

Elaine Janicek, Deputy Clerk/Treasurer



WISCONSIN DEPARTMENT OF  
ADMINISTRATION

SCOTT McCALLUM  
GOVERNOR

GEORGE LIGHTBOURN  
SECRETARY

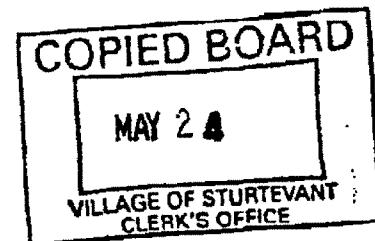
Division of Facilities Development  
Post Office Box 7866  
Madison, WI 53707-7866  
Voice (608) 266-2731  
Fax (608) 267-2710  
TTY (608) 267-9629

731190.00L  
(16)

Wednesday, May 22, 2002

James G. Henke, Village Administrator  
Village of Sturtevant  
2801 89<sup>th</sup> Street  
Sturtevant, WI 53177

Re: Regional Probation & Parole Holding Facility  
DFD Project No. 99H3D  
and  
150-Bed Workhouse  
DFD Project No. 02A2Q



Dear Mr. Henke:

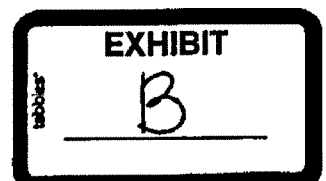
This correspondence addresses the issue of sanitary sewer tap fees for the above referenced projects. DOA legal advises that the tap fee is an ordinance of the village and Wisconsin Statute 13.48(13)(a) is applicable to this situation. That section of the statutes is as follows:

**(13) Application of laws, rules, codes, ordinances and regulations.**  
**13.48(13)(a)**

(a) Except as provided in par. (b) or (c), every building, structure or facility that is constructed for the benefit of or use of the state, any state agency, board, commission or department, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, or any local professional baseball park district created under subch. III of ch. 229 if the construction is undertaken by the department of administration on behalf of the district, shall be in compliance with all applicable state laws, rules, codes and regulations but the construction is not subject to the ordinances or regulations of the municipality in which the construction takes place except zoning, including without limitation because of enumeration ordinances or regulations relating to materials used, permits, supervision of construction or installation, payment of permit fees, or other restrictions.

Please notice that the statute states "...the construction is not subject to the ordinances...of the municipality in which the construction takes place..." which includes "...without limitation...payment of permit fees." The only exception is "zoning," that is land use. DFD takes the position that the two projects are not subject to a tap fee and the permit allowing a connection to the sewer line is in order.

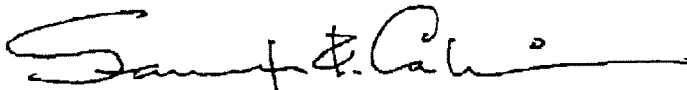
Please contact us if you have questions or concerns regarding our position. You may want to consult your legal counsel regarding past interpretations of the statute quoted above, especially since the amount of the fee is substantial. In developing this project we have enjoyed a good relationship with the Village of Sturtevant and we hope this particular issue will not tint that relationship. We appreciate your timely attention to this matter.



May 22, 2002

Page 2 of 2

Sincerely,  
THE DEPARTMENT OF ADMINISTRATION  
DIVISION OF FACILITIES DEVELOPMENT

A handwritten signature in black ink, appearing to read "Samuel R. Calvin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Samuel R. Calvin, Project Manager

Copies to: Ed Main, DOA Legal  
Dave Haley, DOA/DFD  
Lynn Lauersdorf, DOA/DFD  
Job File

TapFees01.doc

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B I C H L E R

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OCT 11 2002

October 4, 2002

Rep. John W. Lehman  
WI 62nd Assembly District  
Room 303 West  
State Capitol  
P.O. Box 8952  
Madison 53708-8952

Re: Sewer Connection Charge/Village of Sturtevant

Dear Rep. Lehman:

We are the attorneys for the Village of Sturtevant. As you know, the Village of Sturtevant, along with the Towns of Mt. Pleasant and Caledonia, recently reached an agreement with the City of Racine on a sewer service contract. The Village purchased capacity in the upgrades to the Racine sewer treatment system to account for projected flows. The capacity in the sewer system purchased by the Village includes amounts needed to service the State of Wisconsin's 300 bed probation and parole facility that it intends to build in the spring of 2003. According to the Village Administrator, the Village must make payments to Racine over the course of the contract of over \$5.0 million dollars (revenue sharing) and close to \$2.0 million dollars for additional capacity. The Village's ordinance provides for a sewer connection fee to help defray the cost of the Village's present sewer system and amounts needed to upgrade the system. The Ordinance was updated in 2001, with the sewer connection charges being increased in anticipation of the revenue sharing payments and capacity allocation payments to be paid to the City of Racine. Enclosed is a copy of the Ordinance.

The Department of Administration has balked at paying the sewer connection fee in the amount of \$157,200 relying upon sec. 13.48(13) of the Wisconsin Statutes which states as follows:

EXHIBIT

C



- a) Except as provided in par. (b) or (c), every building, structure or facility that is constructed for the benefit of or use of the state, any state agency, board, commission or department, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, or any local professional baseball park district created under subch. III of ch. 229 if the construction is undertaken by the department of administration on behalf of the district, shall be in compliance with all applicable state laws, rules, codes and regulations but the construction is not subject to the ordinances or regulations of the municipality in which the construction takes place except zoning, including without limitation because of enumeration ordinances or regulations relating to materials used, permits, supervision of construction or installation, payment of permit fees, or other restrictions.

It is the Village's position that the sewer connection charge is not a permit fee or other such charge related to construction of a building, but rather as a service charge authorized under sec. 66.0821(4). That section, which authorizes a municipality to establish a sewer service charge, states as follows:

- (a) The governing body of the municipality may establish sewerage service charges in an amount to meet all or part of the requirements for the construction, reconstruction, improvement, extension, operation, maintenance, repair and depreciation of the sewerage system, and for the payment of all or part of the principal and interest of any indebtedness incurred for those purposes, including the replacement of funds advanced by or paid from the general fund of the municipality.

There is no exception or exemption for State facilities related to payment of sewer service charges. To the extent that the State believes the charge is "unreasonable" or "unjustly discriminatory," it can seek review of the same by the Public Service Commission."


It is our understanding that you will seek the opinion of legislative counsel regarding the applicability of the Village's sewer service charge to the State.

Rep. John W. Lehman  
October 4, 2002  
Page 3

Thank you in advance for your assistance in this matter.

Sincerely,

HOSTAK, HENZL & BICHLER, S.C.

  
Timothy J. Pruitt  
tpruitt@hhb.com

TJP/emp  
Enclosure

cc: Village Board, Barbara Pauls, Village of Sturtevant  
Jeffrey Seitz, P.E.  
Sen. Kim Plache

731190.001(116)



## WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director  
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE JOHN LEHMAN  
FROM: Don Dyke, Senior Staff Attorney *DD*  
RE: Village of Sturtevant Sewer Connection Charge for State Probation and Parole Holding Facility  
DATE: November 5, 2002

You request comment on legal issues raised in a dispute between the Village of Sturtevant (Racine County) and the State Department of Administration (DOA) concerning the imposition by the village of a sewer connection charge for a state regional probation and parole holding facility currently being constructed in the village. The DOA contends that the state facility is exempt from the sewer connection charge; the Village of Sturtevant contends that the state facility is subject to the charge.

Consistent with the nature of your request, this memorandum is not intended to serve as a legal opinion or as a complete analysis of the legal issues raised. Both parties to the dispute are represented by counsel and counsel for each party is in the best position to make detailed legal arguments supporting the position of the client.

### BACKGROUND

The background information summarized below is based on information relating to the dispute supplied by your office.

### The Village's Ordinance

A Village of Sturtevant ordinance imposes a one-time connection charge as a condition of obtaining a permit to connect to the village's sanitary sewer system. See s. 13.17 (2), Municipal Code of the Village of Sturtevant, as amended by Ordinance No. 2001-40. The ordinance includes charges for single-family homes, multi-unit residential facilities, and commercial, industrial, private, and public facilities. Apparently, the sewer connection charge is intended to cover past capital costs of the village's sewer system and capital costs for future system upgrades. The present capacity of the village's sewer system contemplates servicing the state's probation and parole facility.

Based on the charge amounts contained in the village's sewer connection charge ordinance, the village has determined that the state owes \$157,200 before the facility may be connected to the sewer system.

#### DOA's Position

The DOA contends it is exempt by statute from paying the sewer connection charge. The department cites s. 13.48 (13) (a), Stats., which provides in pertinent part:

... every building, structure, or facility that is constructed for the benefit of or use of the state ... shall be in compliance with all applicable state laws, rules, codes, and regulations but the construction is not subject to the ordinances or regulations of the municipality in which the construction takes place except zoning, including without limitation because of enumeration ordinances or regulations relating to materials used, permits, supervision of construction or installation, payment of permit fees, or other restrictions.

More specifically, the DOA cites the language: "... the construction is not subject to the ordinances ... of the municipality in which the construction takes place ... including ... without limitation ... payment of permit fees." The DOA asserts that the sewer connection charge is included within the cited language and, therefore, the probation and parole holding facility is entitled to be connected to the sewer system without payment of the charge.

#### The Village's Position

The Village of Sturtevant asserts that the sewer connection charge is not a permit fee or similar charge related to construction of the building and, therefore, is not covered by s. 13.48 (1) (a). Rather, the village cites s. 66.0821 (4), Stats., both to characterize the charge as a "service charge" and as authority to impose the charge on the state facility. Section 66.0821 (4) (a) provides:

The governing body of the municipality may establish sewerage service charges in an amount to meet all or part of the requirements for the construction, reconstruction, improvement, extension, operation, maintenance, repair and depreciation of the sewerage system, and for the payment of all or part of the principal and interest of any indebtedness incurred for those purposes, including the replacement of funds advanced by or paid from the general fund of the municipality. Service charges made by a metropolitan sewerage district to any town, village or city shall be levied by the town, village or city against the individual sewer system users within the corporate limits of the municipality, and the municipality shall collect the charges and promptly remit them to the metropolitan sewerage district. Delinquent charges shall be collected in accordance with sub. (4) (c).

The village notes that the above provision includes no exception or exemption related to payment of sewer service charges for state facilities.

## COMMENT

### DOA's Position

The DOA broadly interprets the state's exemption from municipal regulation under s. 13.48 (13) (a), Stats. A broad interpretation appears to be generally supported by the legislative history of the provision which reflects that the provision codifies the state's general common law immunity from local regulation in connection with the construction of state facilities. See, e.g., 67 OAG 251 at 252, 253 (1978) and 81 OAG 56 at 58 (1993).

However, the statute's exemption from municipal regulation relates back to the "construction" of state facilities. It may be argued that the Village of Sturtevant's sewer connection charge does not regulate the construction of the state probation and parole holding facility, but, rather, relates to the operation of the facility once constructed. There appear to be no reported appellate court cases or Attorney General opinions addressing the application of s. 13.48 (1) (a) to the issue under consideration (and none is cited by the DOA correspondence reviewed). It is interesting to note that the DOA does not cite what past practice has been with regard to payment of municipal sewer connection charges for state facilities; presumably, this is not a new issue. It is suggested that the DOA be contacted regarding any past treatment of the issue.

### The Village's Position

As noted in the above comment, it appears the village may argue that the sewer connection charge is not a regulation of or restriction on the "construction" of the state facility. The village's argument that the charge is a service charge, rather than a permit fee, and consequently is not covered by s. 13.48 (1) (a) does not appear to be as strong: payment of the service charge is necessary to obtain a permit to connect to the sewer system.

Regarding the village's reliance on s. 66.0821 (4), Stats., the statute does extend broad authority to municipalities to establish sewerage service charges. However, it may be argued that because the state is not specifically subject to the provision, the authority does not extend to sewerage service charges against the state. Regulatory statutes of general application are often interpreted by courts not to apply to the state unless the state is expressly mentioned. Compare, for example, s. 66.0705, Stats., relating to the application of municipal special assessments to property of the state, which expressly includes state property within its coverage. This may be contrasted with s. 66.082 (4), which does not expressly include the state.

### Another Statute--Section 70.119 (1)

A statute not cited by either side of the dispute is s. 70.119 (1), Stats. That section provides as follows:

70.119 (1) The state . . . shall make reasonable payments at established rates for water, sewer and electrical services and all other services directly provided by a municipality to state facilities . . . including garbage and trash disposal and collection, which are financed in whole or in part by special charges or fees. Such payments for services provided to state

facilities shall be made from the appropriations to state agencies for the operation of the facilities. Each state agency making such payments shall annually report the payments to the department.

The provision arguably supports the position that the state is required to pay a sewer connection charge at established, reasonable rates. Under the provision, it appears that the Department of Corrections, rather than the DOA, is responsible for making the payment.

It is recognized that the remainder of s. 70.119, i.e., subs. (2) to (9)--the payments for municipal services program, is generally limited to charges for police and fire protection and garbage and trash disposal and collection. However, sub. (1) of s. 70.119 appears to be independent of the remainder of the section.

It is also noted that the definition of "municipal services" in the payments for municipal services program include, if approved by the Joint Committee on Finance, "any other direct general government service provided by municipalities to state facilities." See s. 70.119 (3) (d), Stats. Thus, there may be another avenue under s. 70.119 for the village to collect the sewer connection charge.

Based on the information reviewed, it appears that both the DOA and the Village of Sturtevant have offered reasonable legal arguments supporting their respective positions. However, there is a statute not cited by either side that appears to be relevant to the dispute. It is suggested that this additional statutory provision be reviewed by both the state and the village.

If you have any questions or need additional information, please contact me directly at the Legislative Council staff offices.

DD:wu:rv:tl;wu

cc: Senator Kimberly Plache  
Representative Bonnie Ladwig  
Representative Samantha Starzyk  
Representative Robert Turner



WISCONSIN DEPARTMENT OF  
ADMINISTRATION

JIM DOYLE  
GOVERNOR

MARC J. MAROTTA  
SECRETARY

Office of the Secretary  
Post Office Box 7864  
Madison, WI 53707-7864  
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March 24, 2003

Timothy J. Pruitt  
Village Attorney  
Village of Sturtevant  
P.O. Box 516  
Racine, WI 53401-0516

RECEIVED  
MAR 26 2003

RE: Sewer Connection Fee/Village of Sturtevant

HOSTAK, HENZL & BICHLER, S.C.

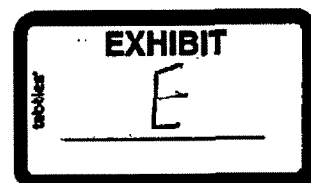
Dear Mr. Pruitt:

I am responding to your letter dated March 12, 2003, relating to the sewer connection charge of the Village of Sturtevant. Please be advised that Mr. Main is no longer with the Department.

You have referred to the analysis prepared by the Wisconsin Legislative Council on this matter. A copy of this memorandum had also been provided to the Department of Administration. Mr. Dyke states that section 70.119(1), Stats., arguably supports the position that the State is required to pay a sewer connection fee at established reasonable rates. We respectfully disagree with Mr. Dyke's suggestion.

Section 70.119, Stats., authorizes payment for services directly provided. No services are being directly provided for the \$154,000. Section 70.119(1), Stats., refers to rates only. The \$154,000 upfront fee is not a rate. The State is willing to pay the rate for sewer service. Section 70.119, Stats., authorizes a rate based on use but applicable to all users. The one-time cost called a "sewer connection charge" is not required of all users, only new customers. It is clear from a reading of the statute that section 70.119, Stats., is intended to apply only to ongoing rates for services provided directly to the State which will be paid out of the operations appropriation of each agency.

Section 66.0821, Stats., provides that sewer service charges shall be collected and taxed in the same manner as water rates are taxed and collected under section 66.0809, Stats. Section 66.0809, Stats., authorizes rates which may be collected monthly, bimonthly or quarterly. There is no authority for an upfront sewer connection charge because this is not a charge in the nature of a rate nor is the collection method authorized. Further, there is no authority for the Village of Sturtevant to refuse to provide sewer service to the State of Wisconsin until such time as a connection charge is paid.



March 24, 2003  
Page 2

The State continues to maintain that, as Mr. Dyke points out, regulatory statutes of general application do not apply to the State unless the State is expressly mentioned. In the absence of a statute requiring the State to pay "a connection fee," the State is exempt from the payment of such charges. The State will pay rates based on services directly provided.

Sincerely,

John F. Rothschild  
Chief Legal Counsel

cc: Secretary Marc Marotta  
Robert Cramer  
Sam Calvin  
Robert Nikolay





STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

*Construction Zoning*

EXHIBIT

C

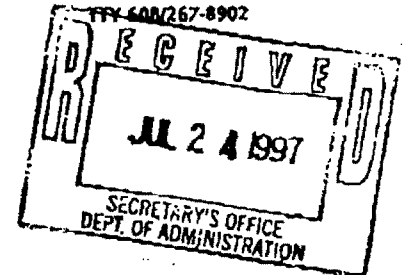
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608/266-1765  
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July 22, 1997

Mr. Mark Saunders  
Deputy Legal Counsel  
Wisconsin Department of Administration  
101 East Wilson Street  
Madison, Wisconsin



Re: Citations Issued by City of Rice Lake  
Violations of Title 13, Article C, Sec. 13-1-  
51(c)(1)

Dear Mark:

Your letter of July 7, 1997, to Matt Frank with respect to this matter has been referred to me. I write as a follow up to our telephone conversation of July 17, 1997.

I agree that the matter is similar to the Eau Claire matter with respect to which Judge Gerald C. Nichol held that the state was not required by sec. 13.48(13), Stats., to pay zoning permit fees. I also agree with the advice which Alan Lee has given over the years to the effect that the state is required to follow the zoning law, but is not required to obtain permits or pay fees pursuant to local regulation.

On the other hand, while this matter is similar to the Eau Claire matter, it is not the same. In the Eau Claire case, both the contractor and the state were named as parties. Thus, Alan Lee had to appear for the state, and moved to dismiss the contractor so that he could have venue changed to Dane County. In the instant matter, only the contractor has been named as a party. The attorney general does not have the authority to represent a private party. I therefore have no alternative but to decline your request to represent Mr. Johnson with respect to the citations which the City of Rice Lake has issued.

Based on our telephone conversation of July 17, 1997, it is my understanding that you will be notifying Mr. Johnson of this office's position, and the necessity that he retain private

Mr. Mark Saunders

July 22, 1997

Page 2

counsel. I am returning the 9 citations, and the letter from the City of Rice Lake, in the event that they are needed with respect to further action.

Very truly yours,

Charles R. Larsen

Assistant Attorney General

CRL



STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

EAU CLAIRE COUNTY,

Plaintiff,

MEMORANDUM DECISION  
AND ORDER

v.

CASE NO. 93-CV-4294

DEPARTMENT OF TRANSPORTATION,  
and DEPARTMENT OF ADMINISTRATION,

Defendants.

BEFORE THE HON. GERALD C. NICHOL, CIRCUIT JUDGE, BRANCH #9

Plaintiff seeks a declaratory judgment under § 806.04, Stats., on whether § 13.48(13), Stats., requires the state to pay zoning permit fees under local zoning ordinances in order to construct an addition to state patrol headquarters in that local. Defendants contend that § 13.48(13), Stats., does not subject the state to zoning permit fees in the present case.

Both parties have briefed the issues.

After reviewing the record, filings, briefs, and relevant law, this court has determined that plaintiff's request for declaratory relief must be denied.

Law

"Courts of record within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." § 806.04(1), Stats. "The declaration may be either affirmative or negative in form and effect..."

Id.

The conditions for entry of a declaratory judgment are that a justiciable controversy exist, that the controversy be between persons whose interests are adverse, that the party seeking declaratory relief have a legal interest in the controversy, and that the issue be ripe for judicial

determination. Loy v. Bunderson, 101 Wis. 2d 215, 304, N.W.2d 140, reversed on other grounds, 320 N.W.2d 175.

The state cannot be sued without its consent. Fiala v. Voight, 93 Wis. 2d 131, 144, 274 N.W.2d 598 (1979). No action will lie against a sovereign state without express legislative permission. State ex. rel. Martin v. Reis, 230 Wis. 2d 683, 685, 284 N.W.2d 580 (1939); Fiala, 93 Wis. 2d at 343.

Statutes are not to be extended so as to impose any duty beyond that imposed by the common law unless the statute clearly and beyond any reasonable doubt expresses such a purpose by language that is clear, unambiguous and peremptory. Graube v. Moths, 56 Wis. 2d 424, 437, 202 N.W.2d 261 (1972).

#### Opinion

Defendants make no objection as to the appropriateness of a declaratory judgment in the case at hand. Equally, this court considers declaratory judgment and appropriate remedy. Accordingly, this court finds that the conditions for declaratory relief are present.

The facts in this case are undisputed and simple. Defendants constructed an addition to a state patrol headquarters located in Eau Claire County. The construction took place in a zoning district created in plaintiff's comprehensive zoning code. Under that zoning code, land use and conditional use permits are required prior to any structure alteration. Defendants did not obtain these permits in the present case. The cost of the permits under the Eau Claire County Zoning Code is \$264.30.

Section 13.48(13), Stats., is the statute in question in this case. Section 13.48(13), Stats., provides:

"APPLICATION OF LAWS, RULES, CODES, ORDINANCES AND REGULATIONS. (a) Except as provided in par. (c), every building, structure or

facility that is constructed for the benefit of or use of the state or any department shall be in compliance with all applicable state laws, rules, codes and regulations but the construction is not subject to the ordinances or regulations of the municipality in which the construction takes place except zoning, including without limitation because of enumeration ordinances or regulations relating to materials used, permits, supervision of construction or installation, payment of permit fees, or other restrictions.

(c) No construction undertaken by the state for the purpose of renovation of the state capitol building is subject to any state law, rule, code or regulation, or any zoning ordinance or regulation of the city of Madison, governing such construction."

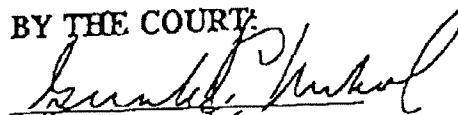
Plaintiff contends that where § 13.48(13), Stats., provides that local ordinances and regulations do not apply to the state, but then makes an exception for "zoning", that in fact the statute does not relieve the state from paying zoning permit fees. This court does not agree. The statute provides that the state is not subject to ordinances and regulations of the municipality in which the building is located. It goes on to provide a non-exhaustive list of examples. Included in the list of examples are ordinances and regulations relating to materials used, permits, supervision of construction or installation, and payment of permit fees. The fact that there is an exception for "zoning", in the light of the language excluding payment of permit fees, and the long standing common law rules of sovereign immunity, indicates that the exception does not refer to zoning permits and fees. The statutory language "except zoning", is not a clear and unambiguous indication that the state consents to be sued for zoning permit fees.

Therefore, plaintiff's motion for declaratory judgment must be DENIED.

IT IS SO ORDERED

Dated this 7<sup>th</sup> day of May, 1994.

BY THE COURT:

  
Gerald C. Nichol  
Circuit Judge



## GENERAL CONDITIONS OF THE CONTRACT

ARTICLE		PAGE
1.	<u>CONTRACT ADMINISTRATION</u>	1
2.	<u>DEFINITIONS</u>	2
3.	<u>CONTRACT DOCUMENTS</u>	4
4.	<u>CONFLICTING CONDITIONS</u>	4
5.	<u>CONTRACT SECURITY</u>	5
6.	<u>SAFETY AND ACCIDENT PREVENTION</u>	5
7.	<u>PROTECTION OF WORK AND PROPERTY</u>	6
8.	<u>PERMITS, REGULATIONS, UTILITIES, AND TAXES</u>	6
9.	<u>STATE RESPONSIBILITY FOR THE SITE</u>	7
10.	<u>CONTRACTOR RESPONSIBILITY FOR CONDITIONS AT THE SITE</u>	7
11.	<u>SUBCONTRACTS</u>	8
12.	<u>LEAD CONTRACTOR RESPONSIBILITIES</u>	9
13.	<u>SCHEDULING AND COORDINATION OF WORK</u>	11
14.	<u>CONTRACTOR'S OBLIGATIONS AND SUPERINTENDENCE</u>	13
15.	<u>QUALITY CONTROL &amp; INSPECTION</u>	13
16.	<u>SUBMITTALS</u>	15
17.	<u>EQUALS AND SUBSTITUTIONS</u>	16
18.	<u>CHANGES IN THE WORK</u>	16
19.	<u>REPORTS, RECORDS AND DATA</u>	19
20.	<u>NOTICE REQUIREMENTS</u>	19
21.	<u>TIME FOR COMPLETION OF THE PROJECT</u>	20
22.	<u>USE AND POSSESSION PRIOR TO COMPLETION</u>	21
23.	<u>SUBSTANTIAL COMPLETION</u>	22
24.	<u>FINAL COMPLETION AND FINAL PAYMENT</u>	22
25.	<u>WARRANTIES</u>	23
26.	<u>PAYMENTS TO CONTRACTOR</u>	24
27.	<u>PAYMENTS BY CONTRACTOR</u>	26
28.	<u>DFD'S RIGHT TO SUSPEND, CORRECT, OR COMPLETE WORK</u>	26
29.	<u>DFD'S RIGHT TO TERMINATE CONTRACT</u>	27
30.	<u>CLAIMS</u>	28
31.	<u>INSURANCE</u>	29
32.	<u>NONDISCRIMINATION / AFFIRMATIVE ACTION</u>	31
33.	<u>MINIMUM WAGES</u>	31
34.	<u>APPRENTICES</u>	32
35.	<u>ASSIGNMENTS</u>	32
36.	<u>ANTITRUST AGREEMENT</u>	32
37.	<u>INDEMNIFICATION</u>	33
38.	<u>CONTRACTOR PERFORMANCE EVALUATION</u>	33

## GENERAL CONDITIONS OF THE CONTRACT

(REV. 3/02/98)

Representative at the Work site, shall be deemed sufficient notice of noncompliance and that corrective action is required. After receiving the Notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, DFD may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor shall not be entitled to an equitable adjustment of the Contract price or an extension of the performance schedule by reason of the issuance of any stop Work order under this Article 6.

- E. The Contractor shall cause this Article 6, including this Paragraph E., with appropriate changes in paragraph designation, to be incorporated in all subcontracts, regardless of tier.

### 7. PROTECTION OF WORK AND PROPERTY

- A. The Contractor shall at all times safely guard State property and adjacent property from injury, loss, release of hazardous or toxic materials, or damage in connection with the Contract Documents or the performance of the Work hereunder. To the extent not covered by the State's Property Insurance for the Project, the Contractor shall replace or make good any such damage, loss or injury unless it is caused directly by errors contained in the Contract Documents, or by the State.
- B. In case of an emergency which threatens loss or injury of property, or safety of life, the Contractor will be allowed to act, without previous instructions from DFD, in a diligent manner. The Contractor shall notify DFD immediately thereafter. Any claim for compensation by the Contractor due to such extra Work shall be promptly submitted to DFD for approval as provided for in Article 18 of these General Conditions.
- C. In the event of temporary suspension of Work, or during inclement weather, or whenever DFD shall direct, the Contractor and its Subcontractors shall carefully protect all Work and materials against damage or injury from the weather. If, in the opinion of DFD, any Work or materials have been damaged or injured by reason of failure on the part of the Contractor or any Subcontractors to protect the Work, to the extent not covered by DFD's Property Insurance for the Project, such materials shall be removed and replaced at the expense of the Contractor.
- D. To the extent not covered by the State's Property Insurance for the Project, the Contractor shall promptly, and without prior demand by DFD remedy and repair any damage caused by the Contractor and its subcontractors, suppliers and vendors to completed or partially completed construction or to property of DFD or other Contractors.

### 8. PERMITS, REGULATIONS, UTILITIES, AND TAXES

- A. The Contractor shall procure all permits, licenses and approvals necessary for the execution of this Contract and performance of the Work, and shall provide evidence of such permits, licenses, and approvals at the Pre-Construction Meeting or before commencement of the Work.
- B. Where Contract Documents require abatement of asbestos containing materials, prior written Notice to the State of Wisconsin, Department of Natural Resources is required. The Contractor shall provide evidence of such Notice prior to commencement of the Work.
- C. Work under this Contract shall be in compliance with all applicable state laws, codes and regulations relating to environmental quality and safety, the performance of the Work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities. Such Work shall not be subject to the ordinances or regulations (except land use zoning) of the municipality in which the construction takes place, including ordinances or regulations relating to materials used, permits, supervision of construction or installation, payment of permit fees, or other restrictions of any nature whatsoever. DFD shall be notified by the Contractor of any Notices of noncompliance or violation associated with Work required by the Contract Documents.
- D. The Contractor shall pay all Sales, Consumer, Use and other similar taxes required by law assessed to or arising out of the construction of the Project.
- E. If the Contractor believes that any of the Work required by the Contract Documents is in violation of any State law, code, rule or regulation, the Contractor shall promptly notify DFD. Upon such notification, DFD will determine

## GENERAL CONDITIONS OF THE CONTRACT

(REV. 3/02/98)

whether corrective action is required and make such changes, if any, at no additional cost to the Contractor provided such violation was not caused by the Contractor.

F.

Charges for water, sewer and other utility connections made by municipalities will be paid by the State. Payment for use of such services and utilities before Substantial Completion shall be in accordance with provisions of the General Requirements of the Contract.

### 9. STATE RESPONSIBILITY FOR THE SITE

- A. Prior to start of construction, the State shall furnish all land and rights-of-way necessary for the carrying out and completion of the Work to be performed under this Contract.
- B. DFD will furnish to the Contractor site, topography and property surveys which DFD reasonably believes necessary for the execution of the Work.
- C. DFD, upon receipt of the Notice set forth in Paragraph 10.E., shall promptly investigate the site conditions reported by the Contractor to determine whether the conditions discovered differ materially from those indicated in the Contract Documents, are of an unknown and unusual nature which could not have been discovered by a reasonable site investigation by the Contractor as required by the Contract Documents, or which differ materially from those ordinarily encountered and generally recognized as being inherent in the Work of the character required by the Contract Documents at the site where Work is to be performed.
- D. DFD shall act on any Contractor Notice, as described in Paragraph 10.E., as soon as practicable, but in no case later than ten (10) working days after the receipt of such Notice. If DFD determines that the conditions reported by the Contractor differ materially from those indicated in the Contract Documents, or are of an unknown and unusual nature which could not have been discovered during a reasonable site investigation by the Contractor, then to the extent established by the Contractor and approved by DFD, DFD shall authorize an increase or decrease in the cost or time required for performing any part of the Work under this Contract.
- E. No request by the Contractor for an equitable adjustment to the Contract under this Article 9 shall be allowed, unless the Contractor gives proper Notice, which is a CONDITION PRECEDENT to any liability on the part of the State.
- F. In no event, shall any claim by the Contractor for equitable adjustment to the Contract for differing site conditions be allowed if presented after final payment under this Contract is made.

### 10. CONTRACTOR RESPONSIBILITY FOR CONDITIONS AT THE SITE

- A. The Contractor is responsible for and hereby acknowledges that it has taken the steps reasonably necessary to prepare a bid which includes the costs for Work, the requirement for which would reasonably be known to a competent Contractor, in overcoming normal subsurface conditions at the site where the Work is to be performed and in order to accomplish the Work described in the Contract Documents. Additionally, the Contractor certifies that it has investigated the site and satisfied itself as to the general and local conditions which affect the Work or its cost, including, but not limited to:
  - 1. Conditions bearing upon transportation, disposal, handling and storage of materials;
  - 2. The availability of labor, water, electric power, and roads or access;
  - 3. Uncertainties of weather, river stages, tides or similar physical conditions at the site;
  - 4. The conformations and conditions of the ground; and
  - 5. The character of facilities and equipment as represented by the Contract Documents.



## GENERAL CONDITIONS OF THE CONTRACT

(REV. 3/02/98)

- B. While the State has such possession or use, the Contractor shall be relieved of the responsibility for loss or damage to the Work resulting from the State's possession or use.

23

### SUBSTANTIAL COMPLETION

- A. Prior to any Contractor request for final inspection by DFD, the Contractor shall conduct an inspection to determine if building systems are functional, Work activities complete, and the Work product is in strict accordance with the requirements of the Contract Documents. If, in the course of this inspection, items are identified which are in need of repair, replacement, correction, or completion, the Contractor shall make every attempt to complete or correct those items prior to any request for DFD inspection of the Work or Certification of Substantial Completion.
- B. When the Contractor considers that the Work, or a designated portion thereof, is Substantially Complete, the Contractor shall provide written Notice and Request for Inspection to DFD. Upon the receipt of the Contractor's Notice, DFD will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If, during such inspection, DFD identifies items not complete, in need of correction, replacement, or otherwise not in accordance with the requirements of the Contract Documents, the Contractor shall complete or correct such items. After completion of such punch list items, the Contractor may request subsequent inspection by DFD.
- C. When in the judgment of DFD, the Work or designated portion thereof, is Substantially Complete, DFD will prepare a Certificate of Substantial Completion, establishing the responsibilities of the State and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance.
- D. Where items have been identified which are not complete or are in need of correction, DFD may, at its sole discretion declare the Work or designated portion thereof, Substantially Complete, noting such deficiencies. In such case, the Certificate of Substantial Completion shall fix the time within which the Contractor shall finish all items not completed or corrected.
- E. At the time DFD declares the Work or designated portion thereof Substantially Complete, the Contractor may request payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

### 24. FINAL COMPLETION AND FINAL PAYMENT

- A. Prior to Request for Final Payment, the Contractor shall provide a Certification that all debts and claims against this Project have either been paid in full or otherwise satisfied and give final evidence of release of all liens against the Project, the State, and all proceeds payable hereunder. The Contractor shall certify upon such payment request that the data contained therein is current, accurate, and complete. Contractor shall permit, if requested by DFD, the final inspection to be jointly conducted by the Contractor and DFD's Project Representative. Contractor shall give Notice at least 72 hours in advance of the time set for final inspection.
- B. Upon completion of the project and before receiving final payment for work on the project, the Contractor shall file with DFD an affidavit stating that the Contractor has complied fully with Section 103.49(4r) Wis. Stats. and that the Contractor has received an affidavit from each of the Contractor's agents and Subcontractors stating that they also have complied fully with Section 103.49(4r) Wis. Stats.
- C. As a CONDITION PRECEDENT to Final Payment, all corrective action to remedy deficiencies in the Work required by Contract Documents and Work identified on the punch list must have been completed. In addition, where required by Contract Documents, all training of the user agency's staff in the proper operation and maintenance of the Work shall have been completed, Operating and Maintenance Manuals and Instructions as well as drawings marked up to reflect "as built" conditions must have been transmitted to DFD's Project Representative, and all Warranty certificates signed and presented for DFD acceptance.
- D. When to the satisfaction of DFD, the Work has been completed, and is of the quality required by the Contract Documents, DFD may authorize payment of all sums then due the Contractor. Receipt of the final payment, as

VILLAGE OF STURTEVANT  
MUNICIPAL BUILDING

2801 EIGHTY-NINTH ST.  
STURTEVANT, WISCONSIN 53177  
(262) 886-7200 • FAX (262) 886-7205

EXHIBIT

number

RECEIVED  
DIVISION OF  
INFRASTRUCTURE DEVELOPMENT  
2001 AUG 22 AM 11:22

CAP ACCTG

August 21, 2001

DEFD PROJECT RELATED EXPENDITURE:

Mr. Samuel R. Calvin, R.A.  
101 East Wilson Street, 7<sup>th</sup> Floor  
PO Box 7866  
Madison, WI 53707-7866

Date 9/12/01 Processor J. Hughes  
Proj. No. 99H3D Agency DOC-470  
Proj. Descrip. 4 PROBATION / PAROLE FACILITIES  
Vendor Name STURTEVANT, VILLAGE OF  
Vendor No. 396006381A Proj. Mgr. CALVIN  
Amt. 5,692.50 Line No. 3

Re: Sewer Extension - 90<sup>th</sup> Street

Dear Mr. Calvin:

Attached is an invoice from Dolson, Inc. (#02201) in the amount of \$4,950.00 for the extension of a 10" sanitary sewer stub to accommodate the future prison facility.

By copy of this letter, please submit payment to the Sturtevant Water & Wastewater Utility in the amount of \$5,692.50 (a 15% up charge is being added to cover engineering and administrative costs).

Sincerely,

  
James G. Henke - Village Administrator

Cc: Barb Pauls - Village Clerk/Treasurer  
Steve Jansen - Chairperson, Water & Wastewater  
John Johnson - Chairperson, Public Works  
Jeff Seitz - Crispell/Snyder

8-23-01

Approved for direct payment. This is work completed by a public utility of Sturtevant.  
Project 99H3D, line 3. \$5,692.50

Sam Calvin

DOLSON, INC.

915 Woodland Dr.  
Rhineland, WI 54501  
(715) 369-5030

02201

INVOICE DATE: July 31, 2001

CRISPELL-SNYDER INC.

LD TO:

Crispell-Snyder, Inc.  
Racine Office  
6011 Durand Ave., Suite 500  
Racine, WI 53406

Aug 2 2001

CUSTOMER ID	PURCHASE ORDER	PAYMENT TERMS	PAGE
	Job #21071	Upon Receipt	1 of 1

QUANTITY	ITEM NUMBER	DESCRIPTION	UNIT PRICE	EXTENSION
		Village of Sturtevant		
		90th Street Sewer Extension	495.00	
<i>8-21-01</i> <i>Back Sewer</i> <i>CR</i>				
TOTAL				\$4,950.00



**View Related Items**

**Change Order Detail for DOC VARIOUS Prob/Parole Hold Fac-4 Locat (99H3D) P-12**

Contract No: 11832

Date Submitted: 6/6/2003

Project Manager: Sam Calvin

Agency: CORRECTIONS

Institution: VARIOUS

Architect/Engineer: The Durrant Group, Inc. -John Kniesz

Contractor: UNITED MECHANICAL INC -Greg Gain

Contractor Feint: 391051442

Type of Work: Plumbing

Funding:

Status: Approved

PM Approval: 6/23/2003

Contractor Acceptance: 6/17/2003

"Governor's approval not required in accordance with Section 16.87 Wis. Statute"

Number of Items for this change order: 1

**1. Description**

CB 1013 P: Relocate building water main 1. Refer to sheets P1.2 and P4.1: Boiler room (RM.# 193). Delete water meter, Isolation valves around water meter, meter by pass, and 2" test station, from plumbing floor plans and riser. Provide building control valve on 4" take off from 6" main as required by code, extend up to structure then north per plans. Water meter to be located in a meter pit out side of the building, by the site contractor. 2. Install the water main and meter pit as described on drawings CB 1013-1, 1013-2, 1013-3, and 1013-4. Contractor shall abandon approximately 90 feet of installed water main leading up to 90th Street. Contractor shall excavate at the existing water main termination at 90th Street to remove the installed air vent. The water main end will be capped. The abandoned portion will be documented on Record Drawings. The water main shall be connected to the Village water supply per John Rothschild's letter to the Village of Sturtevant dated 5/22/03.

Reason Category: Unforeseen Conditions

Reason: Water meter and water main tap relocation required by the Village of Sturtevant.

Requestor: A/E

See Proposal In: PC# 13

Amount: \$53,970.52

**Contract Information**

The Original Contract Sum was:

\$940,000.00

Net Change by Previous Change Orders:

\$26,581.96

The Contract Sum prior to this Change Order was: \$966,581.96  
The Contract Sum will be increased by this Change Order: \$53,970.52  
The New Contract Sum including this Change Order will be: \$1,020,552.48  
The Contract Time will be increased by: 30 Days  
The Date of Completion as of the date of this Change Order therefore is: 6/23/2003



[HOME](#) [HELP](#) [LOG OFF](#)

[FEEDBACK TO WISBUILD TECH SUPPORT](#)

YOUR AVAILABLE WISBUILD SECURITY GROUPS:

Architects/Engineer - Project Manager

Wisconsin Department of Administration  
Division of State Facilities  
101 East Wilson Street  
Madison, WI 53707

© 1998, 1999, 2000

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
101 East Wilson Street, Madison, Wisconsin

JIM DOYLE  
GOVERNOR

MARC J. MAROTTA  
SECRETARY



Division of State Facilities  
Madison Regional Office  
2001 West Beltline Hwy., Suite 202  
Madison, WI 53713



## PARTIAL CERTIFICATION OF SUBSTANTIAL COMPLETION

May 29, 2003

Division of Facilities Development  
Madison Regional Office  
2001 West Beltline Hwy., Suite 202  
Madison, WI 53713

C.D. Smith Attn.: Darin Garbisch 389 E Johnson St. Fond du Lac, WI 54935	Downey, Inc. Attn.: Joe Opdowsky P.O. Box 1155 Milwaukee, WI 53201	Circle Electric Attn.: Robert Mueller 1060 N 115th St. Milwaukee, WI 53226	United Mechanical Attn.: Greg Gair 1500 12th St. Racine, WI 53403	Alcon Fire Protection Attn.: Randall Conrad NS6 W16749 Ridgewood Dr. Suite 300 Menomonee Falls, WI 53051
Accurate Controls Attn.: Tom Rogers 401 Watson St. Ripon, WI 54973				

Re: Sturtevant Probation and Parole Facility  
Project No. 99H3D

This is a Certification of Partial Substantial Completion since all life safety issues are not resolved due to the fact that the connections to the Village's sanitary sewer and water facilities have not yet been accomplished due to legal issues. Site work has not been completed due to the on going construction at the adjacent Workhouse facility.

This will serve to record that, as the result of various inspections made between May 21, 2003 and May 29, 2003

By

John Kuissz  
Marty Valentine  
Cleven Mc Chesney  
Mike Pederson  
Ken Hoefler

Representing

Durrant  
Durrant  
Durrant  
Durrant  
Durrant

the work performed under the contract for the above referenced project with the exception of that work identified in the various punchlists is certified substantially complete. This Certification is applicable only to the office building addition.

The food service equipment and the site work is excluded from this certification.

A list of items to be completed or corrected has been forwarded to you for action. This list may not be exhaustive and failure to include an item on it does not alter your responsibility to complete work in accordance with the contract documents, including authorized changes thereto.

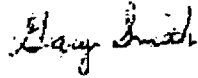
Please promptly submit in writing, the date upon which you can reasonably expect to complete or correct those items contained on the list of work remaining to be done.

May 29, 2003  
Page 2 of 2

The guarantee period shall begin on all completed work on the inspection date recorded herein. Submit immediately all written guarantees on completed work as required by the contract documents.

Guarantees on work remaining will not begin until inspected and approved. All work, to include items on the list to be completed or corrected, shall be subject to a final inspection before acceptance and approval of final payment can be made.

Sincerely,  
Division of Facilities Development



Construction Representative

cc: John Knietsz, Sam Calvin, Russ Wells, Lee Loveall

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
101 East Wilson Street, Madison, Wisconsin

JIM DOYLE  
GOVERNOR

MARC J. MAROTTA  
SECRETARY



Division of State Facilities  
Madison Regional Office  
2001 West Beltline Hwy., Suite 202  
Madison, WI 53713

## PARTIAL CERTIFICATION OF SUBSTANTIAL COMPLETION

July 16, 2003

Division of Facilities Development  
Madison Regional Office  
2001 West Beltline Hwy., Suite 202  
Madison, WI 53713

C.D. Smith Attn: Darin Garbisch 889 E Johnson St. Fond du Lac, WI 54935	Dawmoy, Inc. Attn: Joe Opansky P.O. Box 1155 Milwaukee, WI 53201	Circle Electric Attn: Robert Mueller 1060 N 115th St. Milwaukee, WI 53226	United Mechanical Attn: Greg Galt 1500 12th St. Racine, WI 53403	Alarm Fire Protection Attn: Randall Conrad N56 W16749 Ridgewood Dr. Suite 800 Menomonie Falls, WI 53051
Accurate Controls Attn: Tom Rogers 401 Watson St. Rison, WI 54971				

Re: Soutervant Probation and Parole Facility  
Project No. 99H3D

This is a Certification of Partial Substantial Completion for the remaining work items on the project which were not completed when the previous Partial Substantial Completion was issued on May 29, 2003.

This will serve to record that, as the result of various inspections made between June 6, 2003 and July 15, 2003

By  
John Kniesz  
Bill Gruetzmacher  
Brian Nelson

Representing  
Durran  
G.A.S.  
Stewart Design

the work performed under the contract for the above referenced project with the exception of that work identified in the various punchlists is certified substantially complete.

A list of items to be completed or corrected has been forwarded to you for action. This list may not be exhaustive, and failure to include an item on it does not alter your responsibility to complete work in accordance with the contract documents, including authorized changes thereto.

Please promptly submit in writing, the date upon which you can reasonably expect to complete or correct those items contained on the list of work remaining to be done.

The guarantee period shall begin on all completed work on the inspection date recorded herein. Submit immediately all written guarantees on completed work as required by the contract documents.



Page 2 of 2

Sincerely,  
Division of Facilities Development

**Construction Representative**

cc: John Kniesz, Sam Calvin, Russ Wells, Lee Loveall, Ginny Rauh

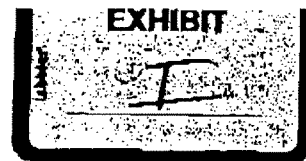


WISCONSIN DEPARTMENT OF  
ADMINISTRATION

JIM DOYLE  
GOVERNOR

MARC J. MAROTTA  
SECRETARY

Division of State Facilities  
Madison Regional Office  
2001 West Beltline Hwy., Suite 202  
Madison, WI 53713



January 12, 2003

United Mechanical  
Attn.: Mr. Kurt Tingwald  
1500 12<sup>th</sup> St.  
Racine, WI 53403

Re: Project Name: Sturtevant Probation & Parole Facility  
Project No.: 99H3D  
Subject: Response to United's December 30, 2003 Additional Costs Memo

Dear Mr. Tingwald,

I am writing this letter in response to your faxed memo and associated supporting documents dated December 30, 2003. I apologize for the delay in getting back to you. I was off work over the Christmas and New Year break and have been getting caught up on issues that came up while I was off.

After reviewing your faxed memo and associated supporting documents, I have several questions that need to be answered before a decision can be made regarding your request for compensation for alleged additional costs incurred by United Mechanical.

You have not specifically stated that your request is a claim. Since your request seems to be for costs associated with work that has already been performed, I see no other way to process your request within the confines of the contract other than to treat it as a claim. If you choose to continue with this matter, I suggest that you clearly state in your response that you are filing a claim. I also suggest that you familiarize yourself with Article 30 of the General Conditions of the Contract regarding claims. In particular, please abide by the restrictions for recoverable costs as stated in Article 30, paragraph E.1, E.2 and E.3

The only references I see in your fax of December 30, 2003 relating to delays is on page 2 of 6 which is your cover memo and on page 3 of 6 (Labor and Material Units) where there is a brief statement that says "Additional hours incurred for water heater installation Late Submittal Approvals".

Please specifically state what delays you are referencing that have led to additional costs for United Mechanical in the amount of \$83,958.21. You need to state the period of time which you perceive as related to each specific delay. You need to explain in detail each cost you have claimed on your supporting documents which accompanied the December 30, 2003 fax and how the costs were incurred as a direct result of the delay. You need to explain what work United performed that was not covered by the base contract or approved change orders.

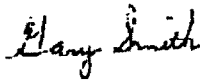
January 13, 2004  
Page 2 of 2

The following items from your faxed memo and associated supporting documents dated December 30, 2003 need explanation and justification based upon the contract requirements.

- \$7,000 General Conditions
- Reassignment of Manpower 353 hours at \$47.51/hr.
- Dilution of Supervision 353 hours at \$47.51/hr.
- Errors and Omissions 212 hours at \$47.51/hr.
- Extended Warranties \$7000
- Additional hours incurred for water heater installation (Late submittal approvals) 64 hours at \$47.51/hr. The DSF Division Administrator, Rob Cramer, has already addressed the matter of the water heater in the letter he sent to you dated 10/9/02.
- Storage Trailers 4 weeks at \$146.50 per week
- Plumbing Trucks/tools 40 days at \$140.23 per day
- Racine Machinery Movers \$1275.00
- Mobilize/Remobilize \$2960.00
- Material Cost \$14,595.00
- Large Tool and Equipment Costs \$6195.00

Please provide the explanation and justification of all costs listed above so that we may proceed with a response to your request. Also, provide any and all backup you may have for the additional costs.

Sincerely,



Gary Smith  
Construction Representative  
Division of Facilities Development

cc: M. Widen, S. Calvin

99H3D\_4

## Kuesel, Jeffery

---

**From:** Risch, Jay  
**Sent:** Friday, October 22, 2004 2:35 PM  
**To:** Kuesel, Jeffery  
**Subject:** FW: Sturtevant Sewer Connection Charge

Jeff,

Per our conversation from moments ago...

Thanks - Jay

-----Original Message-----

**From:** Christopher Geary [mailto:Cgeary@hnb.com]  
**Sent:** Friday, October 22, 2004 1:43 PM  
**To:** Risch, Jay  
**Subject:** Sturtevant Sewer Connection Charge Bill

Jay,

I understand from reviewing this file that you have had communication with Erik Guenther, formerly of our office, regarding Senator Stepp's willingness to introduce legislation to pay the Village's claim for an outstanding sewer connection fee that the Department of Corrections has refused to pay, and that the Claims Board recently denied. As you may already be aware, Senator Stepp helped put pressure on the Department of Administration relating to this matter a couple of years ago, and we certainly thank her (and you) in advance for any assistance you can offer. Obviously, we don't necessarily expect that this legislation will pass, but it is nevertheless a statutory prerequisite to further legal action.

From reviewing the file, it looks like you had asked that we prepare a draft bill. Frankly, while I've frequently complained about how legislation is drafted, I've never actually tried my hand at it. However, I found several currently pending bills online that look like they would serve as adequate models, and I modified them from there. I did leave the specific statutory section from which the claim should be paid blank, thought, as you folks certainly know better than I where the money should come from, but I would throw out sections 20.410(1)(c) (relating to county claims), 20.410(1)(gi) (general operations), and 20.410(1)(a) (general program operations) as possible alternatives.

If the draft bill needs further revision on our end, if you need any additional documentation regarding this matter, or if there is anything else we can do to expedite the process, please drop me a line. Thanks again for your assistance.

### Christopher A. Geary

Hostak, Henzl & Bichler, S.C.  
840 Lake Avenue  
Racine, WI 53402  
(262) 632-7541  
(262) 632-1256 (fax)

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10/22/2004

## 20\_\_ SENATE BILL \_\_

1 **AN ACT relating to:** the expenditure of \$168,937.10 from moneys appropriated to  
2 the Department of Corrections in payment of a claim against the state made by  
3 the Village of Sturtevant.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1 **SECTION 1. Claim against the state.** There is directed to be expended from the  
2 appropriation under section 20.410\_\_ of the statutes \$168,937.10 in payment of a  
3 claim against the state made by the Village of Sturtevant to compensate the claimant  
4 for a sewer connection charge, plus 5% interest, that was not paid by the Department  
5 of Corrections in connection with the operation of a new 300 bed Regional Probation  
6 and Parole Holding Facility in the Village of Sturtevant. Acceptance of this payment  
7 releases this state and its officers, employees, and agents from any further liability  
8 to the Village relating to the facility's sewer connection.

9 (END)

2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0236/1ins

JTK.....f.....

Wlj

*wanted by THU 11/4*

Analysis insert

GEN

AN ACT relating to: expenditure of a sum sufficient equal to \$158,800 plus accrued interest from the general fund in payment of a claim against the state made by the Village of Sturtevant.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1. Claim against the state.** There is directed to be expended from the appropriation under section 20.505 (4) (d) of the statutes, as affected by the acts of 2003 and 2005, \$158,800, plus interest at the legal rate under section 138.04 of the statutes calculated from the date of billing to the date of payment, in payment of a claim against the state made by the village of Sturtevant for connection charges levied by the village to connect the probation and parole holding facility, workhouse and garage at the Racine Correctional Institution with the village sewage system. Acceptance of this payment releases this state and its officers, employees, and agents from any further liability resulting from expenses incurred by the village in making these connections.

(END)

2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0236/lins2

JTK.../....

WLy

② This bill directs expenditure of \$158,800, plus interest calculated at the legal rate of 5% annually from the date of billing to the date of payment, in payment of a claim against the Department of Administration (DOA) by the village of Sturtevant. In 2001, DOA completed construction of a probation and parole holding facility, workhouse, and garage at the Racine Correctional Institution as a part of the authorized state building program and requested the village to connect the newly constructed buildings to the village sewage system. The village permitted the connections to be made. Per village ordinance, the village requested payment of \$158,800 in sewage connection charges. DOA declined to pay the charges, citing s. 13.48 (13) (a), stats., which exempts state construction projects from compliance with most municipal ordinances, including permit fees. The village contends that the charges are sewerage service charges, authorized under s. 66.0201 (4) (a), stats., from which the state is not exempted. On July 13, 2004, the claims board found that the state is not legally liable to pay this claim, nor should the claim be paid on the basis of equitable principles (see 2003 *Senate Journal*, p. 831).

0821

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

**Emery, Lynn**

---

**From:** Risch, Jay  
**Sent:** Thursday, February 03, 2005 4:25 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-0236/1 Topic: Village of Sturtevant claim

It has been requested by <Risch, Jay> that the following draft be jacketed for the SENATE:

Draft review: LRB 05-0236/1 Topic: Village of Sturtevant claim